

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES E. EVANS and TENNESSEE VALLEY AUTHORITY,
SEQUOYAH NUCLEAR PLANT, Chattanooga, Tenn.

*Docket No. 97-1062; Submitted on the Record;
Issued March 5, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has established that his left elbow condition is causally related to his accepted conditions of chronic lumbosacral strain and degenerative disc disease, L5-S1.

The Board has duly reviewed the case record and finds that appellant has not met his burden of proof to establish that his left elbow condition is causally related to his accepted work-related conditions.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained and continues to be disabled due to the accepted conditions of chronic lumbosacral strain and degenerative disc disease, L5-S1 which resulted from a May 7, 1979 work injury.

On January 8, 1993 appellant first reported to Dr. Walter Boehm, a Board-certified neurological surgeon and appellant's treating physician, that he had fallen five to six months earlier injuring his elbow. Dr. Boehm noted that appellant stated that he was getting out of a car, developed severe left leg pain and fell landing on his left elbow. Dr. Boehm noted a loose body in the elbow at that time. Appellant eventually went to an orthopedist for an evaluation.

In a February 21, 1994 report, Dr. Walter King, a Board-certified orthopedist, noted that appellant fell injuring his elbow secondary to his back problem. Examination revealed a loose body in the olecranon bursa with scarring. Positive Tinel sign over the ulnar nerve. Dr. King gave the impression of tardy ulnar nerve palsy with olecranon bursitis, chronic and recommended excision of the olecranon bursa and ulnar nerve transfer. In a March 8, 1994 report, Dr. King stated: "He has a positive physical examination and positive x-ray for degenerative disease about the elbow. The tardy ulnar nerve palsy is the diagnosis. The ulnar nerve transfer and internal neurolysis is the surgical procedure. The reason for the surgery is tardy ulnar nerve palsy." A March 11, 1994 report from Dr. King stated that "the patient had x-

rays that show the loose body in his elbow with fluid in his olecranon bursa. There is also some degenerative joint disease of the elbow. The patient needs an excision of the olecranon bursa with ulnar nerve transfer and internal neurolysis. The reason for this surgery is that he is having compression of his ulnar nerve and has severe chronic olecranon bursitis secondary to this back problem that he has had.”

In a June 17, 1994 report, Dr. Boehm noted that appellant had been out of work since 1989 for a back condition. It was noted that appellant has continued to have problems with his back, particularly with the left lower extremity, but that various attempts to rehabilitate him have proved unsuccessful. Dr. Boehm noted that in June or July 1992, appellant developed severe left leg pain as he was getting out of the car and fell landing on his left elbow which caused a bone chip to occur which will require orthopedic surgery to correct.

On August 9, 1994 the Office sent the case to their District medical adviser, Dr. Harry Collins, Jr., a Board-certified orthopedist. Dr. Collins denied the surgery on the grounds that the diagnosis of tardy ulnar nerve palsy was not causally related to the fall. When asked for further rationale as to why the elbow condition was not considered a consequential injury, Dr. Collins stated that tardy ulnar nerve palsy is typical of a normal degenerative process and that because appellant waited six months before reporting the fall to his physician, it was impossible to prove a causal relationship between the ulnar nerve palsy or the olecranon bursa to a fall caused by severe pain in his leg.

By letter dated August 23, 1994, the Office advised appellant that they were unable to authorize the proposed surgery and provided a copy of Dr. Collins’ comments should appellant wish to respond.

In an August 4, 1995 report, Dr. King stated that appellant is noted to have a tardy ulnar nerve palsy which has been seen by my multiple physicians and all of us feel that this is work related. No explanation or medical rationale was provided for Dr. King’s opinion on causal relationship.

By decision dated October 17, 1996, the Office denied appellant’s claim for compensation for his left elbow condition and recommended surgery based on the Office medical adviser’s opinion that no causal relationship could be proved due to the delay in reporting to the attending physician.

It is an accepted principle of workers’ compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee’s own intentional conduct.¹

¹ *Robert W. Meeson*, 44 ECAB 834 (1993).

In discussing how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment, Professor Larson notes:

“When the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of ‘direct and natural results’ and of claimant’s own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.”²

Thus, it is accepted that once the work-connected character of any condition is established, “the subsequent progression of that condition remains compensable *so long as the worsening is not shown to have been produced by an independent nonindustrial cause.*”³ (Emphasis added.) If a member weakened by an employment injury, contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury, if the further medical complication flows from the compensable injury, *i.e.*, “so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable in the circumstances.”⁴

In the present case, appellant has not submitted the necessary medical evidence to establish that his left elbow condition and proposed surgery are due to the accepted employment injury.

The medical evidence submitted by appellant in support of his left elbow condition offer no medical rationale to explain how appellant’s left elbow condition was caused by the accepted injury. Although both Drs. Boehm and King stated that appellant’s elbow condition was secondary to the employment injury, this alone is not sufficient to establish the necessary causal relationship. The Board has held that a physician’s opinion is not dispositive simply because it is offered by a physician.⁵ To be of probative value to appellant’s claim, the physician must provide a proper factual background and must provide medical rationale which explains the medical issue at hand.⁶ Neither physician explained nor is there any medical evidence of record which shows that appellant’s fall and subsequent elbow condition was a consequential injury arising directly and naturally from the May 7, 1979 injury. Inasmuch as Dr. Collins, the Office medical adviser, stated that no causal relationship could be proved due to the delay in reporting the problem to the attending physician, the Office could properly rely on Dr. Collins’ opinion in denying the claim as he provided a well-rationalized medical opinion.

² Larson, *The Law of Workers’ Compensation* § 13.00.

³ *Id* at § 13.11(a); *see also* Dennis J. Lasanen, 41 ECAB 933 (1990).

⁴ *Supra* note 1.

⁵ *See* Michael Stockert, 39 ECAB 1186 (1988).

⁶ *See* Robert J. Krstyen, 44 ECAB 227 (1992).

The decision of the Office of Workers' Compensation Programs dated October 17, 1996 is hereby affirmed.

Dated, Washington, D.C.
March 5, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member